

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 HENRY J. PRIEN,

11 Plaintiff,

12 v.

13 GARY LUCAS, *et al.*,

14 Defendants.

Case No. C08-5733 BHS/KLS

REPORT AND  
RECOMMENDATION

**NOTED:**  
**February 20, 2009**

15 This civil rights action has been referred to United States Magistrate Judge Karen L.  
16 Strombom pursuant to Title 28 U.S.C. §§ 636(b)(1) and Local MJR 3 and 4. The Court is advised  
17 by Plaintiff Henry J. Prien that he no longer wishes to pursue this action. Dkt. # 7. Accordingly,  
18 the undersigned recommends that this action be dismissed pursuant to Rule 41(a)(1) of the Federal  
19 Rules of Civil Procedure.

20 **DISCUSSION**

21 Mr. Prien's application to proceed *in forma pauperis* was granted on December 15, 2008.  
22 Dkt. # 5. On December 16, 2008, the Court advised Mr. Prien that it would not serve his complaint  
23 and directed Mr. Prien to file an amended complaint or show cause why the complaint should not be  
24 dismissed for failure to state a claim under 42 U.S.C. § 1983. Dkt. # 6. In his Complaint, the  
25 Plaintiff states that he is re-filing his claims that were previously dismissed for failure to exhaust,  
26 in Case No. 07-CV-5647 RJB/KLS. Dkt. # 5, pp. 1-2. In this case, Plaintiff claims that he was  
27 denied adequate medical care in the treatment of an abscess on his buttock which became infected,  
28

1 that prison officials violated their policies and procedures in handling his incoming and outgoing  
2 mail to this Court which was clearly marked as “legal mail,” and that funds were deducted from his  
3 inmate account for copays that he never authorized. Dkt. # 5, pp. 3-8. With regard to the latter  
4 claim, Plaintiff seeks “felony charges of forgery in accordance with the laws of Washington,”  
5 against certain unnamed defendants who allegedly forged his name on health services co-pay  
6 request forms. Dkt. # 5, p. 8.

7 The Court directed Mr. Prien to file an amended complaint or to show cause why this action  
8 should not be dismissed. Dkt. # 6. The Court advised Mr. Prien of the deficiencies in his original  
9 complaint and provided guidance as to the requirements and substance for filing an amended  
10 complaint in compliance with the requirements for stating a claim under § 1983. *Id.*, pp. 2-4. Mr.  
11 Prien was given a deadline of January 16, 2009 to file an amended complaint or show cause. *Id.* at  
12 p. 4.

13 Mr. Prien did not amend his complaint or show cause. Instead, on January 22, 2009, he filed  
14 a motion to voluntarily dismiss his complaint, stating that he is withdrawing his complaint and that  
15 “[d]ue to a riot at the Idaho State Correctional Institute, the Plaintiff is unable to meet the deadline  
16 set by Magistrate Karen L. Strombom.” Dkt. # 7. Mr. Prien has not asked for a continuance of the  
17 deadline.

18 Rule 41(a)(1) of the Federal Rules of Civil Procedure provides, in pertinent part:

19 [A]n action may be dismissed by the plaintiff without order of court (i) by  
20 filing a notice of dismissal at any time before service by the adverse party of  
an answer or of a motion for summary judgment, whichever first occurs . . . .

21 No adverse party has yet been served in this action.

22 Mr. Prien states that he is “withdrawing his complaint.” The undersigned recommends that  
23 this withdrawal be construed as a request for voluntary dismissal of this action.


## 24 CONCLUSION

25 The Court should dismiss this action without prejudice. A proposed order accompanies this  
26 Report and Recommendation.

27 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure,  
28

1 the parties shall have ten (10) days from service of this Report and Recommendation to file written  
2 objections. *See also* Fed. R.Civ.P. 6. Failure to file objections will result in a waiver of those  
3 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time  
4 limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **February**  
5 **20, 2009**, as noted in the caption.

6 DATED this 30th day of January, 2009.

7  
8 

9 Karen L. Strombom  
10 United States Magistrate Judge  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28